

AMENDED IN SENATE MARCH 19, 1998

SENATE BILL

No. 1654

Introduced by Senator Johnston

February 13, 1998

~~An act to amend Section 1685 of the Insurance Code, relating to insurance.—~~ *An act to amend and repeal Sections 1374.7 of the Health and Safety Code, and to amend Section 742.405 of, and to amend and repeal Sections 10123.3 and 10140 of, the Insurance Code, relating to health insurance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1654, as amended, Johnston. ~~Insurance—licensees: certificates of convenience—~~ *Health insurance: genetic information.*

Existing law prohibits health care service plans, multiple employer welfare arrangements, self-insured welfare benefit plans, and certain life and disability insurers from seeking information about a person's genetic characteristics, as defined, for any nontherapeutic purpose. These provisions are to be repealed no later than January 1, 2002.

This bill would extend the operation of these provisions indefinitely, except that the provision relating to multiple employer welfare arrangements would be repealed on January 1, 2001, at the same time as other provisions relating to these arrangements. The bill would also revise the definition of "genetic characteristics" for all of these purposes.

Because a violation of the provision governing health care service plans is a crime, this bill would impose a

state-mandated local program by extending the operation of this provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law authorizes the Insurance Commissioner to issue certificates of convenience to insurance licensees for various purposes, as specified.~~

~~This bill would change incorrect cross-references and make other technical changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1685 of the Insurance Code is~~

2 *SECTION 1. Section 1374.7 of the Health and Safety*
3 *Code, as amended by Section 2 of Chapter 532 of the*
4 *Statutes of 1996, is amended to read:*

5 1374.7. (a) No plan shall refuse to enroll any person
6 or accept any person as a subscriber or renew any person
7 as a subscriber after appropriate application on the basis
8 of a person's genetic characteristics that may, under some
9 circumstances, be associated with disability in that person
10 or that person's offspring. No plan shall require a higher
11 rate or charge, or offer or provide different terms,
12 conditions, or benefits, on the basis of a person's genetic
13 characteristics that may, under some circumstances, be
14 associated with disability in that person or that person's
15 offspring.

16 (b) No plan shall seek information about a person's
17 genetic characteristics for any nontherapeutic purpose.

18 (c) No discrimination shall be made in the fees or
19 commissions of a solicitor or solicitor firm for an
20 enrollment or a subscription or the renewal of an
21 enrollment or subscription of any person on the basis of
22 a person's genetic characteristics that may, under some

1 circumstances, be associated with disability in that person
2 or that person's offspring.

3 (d) "Genetic characteristics" as used in this section
4 means any scientifically or medically identifiable gene or
5 chromosome, or combination or alteration thereof, that
6 is known to be a cause of a disease or disorder *in a person*
7 *or his or her offspring*, or *that is* determined to be
8 associated with a statistically increased risk of
9 development of a disease or disorder, or inherited
10 characteristics that may derive from the individual or
11 family member, that is presently not associated with any
12 symptoms of any disease or disorder.

13 ~~(e) This section shall remain in effect only until~~
14 ~~January 1, 2002, and as of that date is repealed, unless a~~
15 ~~later enacted statute, that is enacted before January 1,~~
16 ~~2002, deletes or extends that date.~~

17 *SEC. 2. Section 1374.7 of the Health and Safety Code,*
18 *as added by Section 2 of Chapter 761 of the Statutes of*
19 *1994, is repealed.*

20 ~~1374.7. (a) No plan shall refuse to enroll any person~~
21 ~~or accept any person as a subscriber after appropriate~~
22 ~~application by reason of the fact that the person carries~~
23 ~~a gene which may, under some circumstances, be~~
24 ~~associated with disability in that person's offspring, but~~
25 ~~which causes no adverse effects on the carrier. Such genes~~
26 ~~shall include, but are not limited to, Tay-Sachs trait, sickle~~
27 ~~cell trait, thalassemia trait, and X-linked hemophilia A. No~~
28 ~~plan shall require a higher rate or charge by reason of the~~
29 ~~fact that the person carries such traits than is at that time~~
30 ~~required of any other individual in an otherwise identical~~
31 ~~classification, nor shall any plan make or require any~~
32 ~~rebate, discrimination, or discount upon the amount to be~~
33 ~~paid or the service to be rendered under the plan because~~
34 ~~the person carries such traits.~~

35 ~~(b) No discrimination shall be made in the fees or~~
36 ~~commissions of a solicitor or solicitor firm for an~~
37 ~~enrollment or a subscription or the renewal of an~~
38 ~~enrollment or subscription of any person by reason of the~~
39 ~~fact that the person carries a gene which may, under~~
40 ~~some circumstances, be associated with disability in that~~

~~person's offspring, but which causes no adverse effects on the carrier. Such genes shall include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia A.~~

~~(e) This section shall become operative on January 1, 2002.~~

SEC. 3. Section 742.405 of the Insurance Code is amended to read:

742.405. (a) No multiple employer welfare arrangement shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No multiple employer welfare arrangement shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring than is at that time required of any other individual in an otherwise identical classification, nor shall any multiple employer welfare arrangement make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the arrangement because the person carries those traits.

(b) No multiple employer welfare arrangement shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10123.3.

~~(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.~~

SEC. 4. *Section 10123.3 of the Insurance Code, as amended by Section 6 of Chapter 532 of the Statutes of 1996, is amended to read:*

10123.3. (a) No self-insured employee welfare benefit plan shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No plan shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring than is at the time required of any other individual in an otherwise identical classification, nor shall any plan make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the plan because the person carries those traits.

(b) No self-insured employee welfare benefit plan shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section means any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder *in a person or his or her offspring*, or *that is* determined to be associated with a statistically increased risk of

1 development of a disease or disorder, or inherited
2 characteristics that may derive from the individual or
3 family member, that is presently not associated with any
4 symptoms of any disease or disorder.

5 ~~(e) This section shall remain in effect only until~~
6 ~~January 1, 2002, and as of that date is repealed, unless a~~
7 ~~later enacted statute, that is enacted before January 1,~~
8 ~~2002, deletes or extends that date.~~

9 *SEC. 5. Section 10123.3 of the Insurance Code, as*
10 *added by Section 4 of Chapter 761 of the Statutes of 1994,*
11 *is repealed.*

12 ~~10123.3. (a) No self-insured employee welfare~~
13 ~~benefit plan shall refuse to enroll any person or accept~~
14 ~~any person as a subscriber after appropriate application~~
15 ~~by reason of the fact that the person carries a gene which~~
16 ~~may, under some circumstances, be associated with~~
17 ~~disability in that person's offspring, but which causes no~~
18 ~~adverse effects on the carrier. Such genes shall include,~~
19 ~~but not be limited to, Tay-Sachs trait, sickle cell trait,~~
20 ~~thalassemia trait, and X-linked hemophilia A. No plan~~
21 ~~shall require a higher rate or charge by reason of the fact~~
22 ~~that the person carries such traits than is at the time~~
23 ~~required of any other individual in an otherwise identical~~
24 ~~classification, nor shall any plan make or require any~~
25 ~~rebate, discrimination, or discount upon the amount to be~~
26 ~~paid or the service to be rendered under the plan because~~
27 ~~the person carries such traits.~~

28 ~~(b) No discrimination shall be made in the fees or~~
29 ~~commissions of a solicitor or solicitor firm for an~~
30 ~~enrollment or a subscription or the renewal of an~~
31 ~~enrollment or subscription of any person by reason of the~~
32 ~~fact that the person carries a gene which may, under~~
33 ~~some circumstances, be associated with disability in that~~
34 ~~person's offspring, but which causes no adverse effects on~~
35 ~~the carrier. Such genes shall include, but not be limited~~
36 ~~to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and~~
37 ~~X-linked hemophilia A.~~

38 ~~(c) This section shall become operative on January 1,~~
39 ~~2002.~~

1 *SEC. 6. Section 10140 of the Insurance Code, as*
2 *amended by Section 8 of Chapter 532 of the Statutes of*
3 *1996, is amended to read:*

4 10140. (a) No admitted insurer, licensed to issue life
5 or disability insurance, shall fail or refuse to accept an
6 application for that insurance, to issue that insurance to
7 an applicant therefor, or issue or cancel that insurance,
8 under conditions less favorable to the insured than in
9 other comparable cases, except for reasons applicable
10 alike to persons of every race, color, religion, national
11 origin, ancestry, or sexual orientation. Race, color,
12 religion, national origin, ancestry, or sexual orientation
13 shall not, of itself, constitute a condition or risk for which
14 a higher rate, premium, or charge may be required of the
15 insured for that insurance.

16 (b) Except as otherwise permitted by law, no
17 admitted insurer, licensed to issue disability insurance
18 policies for hospital, medical, and surgical expenses, shall
19 fail or refuse to accept an application for that insurance,
20 fail or refuse to issue that insurance to an applicant
21 therefor, cancel that insurance, refuse to renew that
22 insurance, charge a higher rate or premium for that
23 insurance, or offer or provide different terms, conditions,
24 or benefits, or place a limitation on coverage under that
25 insurance, on the basis of a person's genetic
26 characteristics that may, under some circumstances, be
27 associated with disability in that person or that person's
28 offspring. This subdivision shall not apply to life and
29 disability income policies issued or delivered on or after
30 January 1, 1995, that are contingent upon review or
31 testing for other diseases or medical conditions.

32 (c) No admitted insurer, licensed to issue disability
33 insurance for hospital, medical, and surgical expenses,
34 shall seek information about a person's genetic
35 characteristics for any nontherapeutic purpose.

36 (d) No discrimination shall be made in the fees or
37 commissions of agents or brokers for writing or renewing
38 a policy of disability insurance, other than disability
39 income, on the basis of a person's genetic characteristics

1 that may, under some circumstances, be associated with
2 disability in that person or that person's offspring.

3 (e) It shall be deemed a violation of subdivision (a) for
4 any insurer to consider sexual orientation in its
5 underwriting criteria or to utilize marital status, living
6 arrangements, occupation, gender, beneficiary
7 designation, zip codes or other territorial classification
8 within this state, or any combination thereof for the
9 purpose of establishing sexual orientation or determining
10 whether to require a test for the presence of the human
11 immunodeficiency virus or antibodies to that virus,
12 where that testing is otherwise permitted by law. Nothing
13 in this section shall be construed to alter, expand, or limit
14 in any manner the existing law respecting the authority
15 of insurers to conduct tests for the presence of human
16 immunodeficiency virus or evidence thereof.

17 (f) This section shall not be construed to limit the
18 authority of the commissioner to adopt regulations
19 prohibiting discrimination because of sex, marital status,
20 or sexual orientation or to enforce these regulations,
21 whether adopted before or on or after January 1, 1991.

22 (g) "Genetic characteristics" as used in this section
23 shall have the same meaning as defined in Section
24 10123.3.

25 ~~(h) This section shall remain in effect only until~~
26 ~~January 1, 2002, and as of that date is repealed, unless a~~
27 ~~later enacted statute, that is enacted before January 1,~~
28 ~~2002, deletes or extends that date.~~

29 *SEC. 7. Section 10140 of the Insurance Code, as added*
30 *by Section 6 of Chapter 761 of the Statutes of 1994, is*
31 *repealed.*

32 ~~10140. (a) No admitted insurer, licensed to issue life~~
33 ~~or disability insurance, shall fail or refuse to accept an~~
34 ~~application for that insurance, to issue that insurance to~~
35 ~~an applicant therefor, or issue or cancel that insurance,~~
36 ~~under conditions less favorable to the insured than in~~
37 ~~other comparable cases, except for reasons applicable~~
38 ~~alike to persons of every race, color, religion, national~~
39 ~~origin, ancestry, or sexual orientation. Race, color,~~
40 ~~religion, national origin, ancestry, or sexual orientation~~

1 ~~shall not, of itself, constitute a condition or risk for which~~
2 ~~a higher rate, premium, or charge may be required of the~~
3 ~~insured for that insurance.~~

4 ~~(b) It shall be deemed a violation of subdivision (a) for~~
5 ~~any insurer to consider sexual orientation in its~~
6 ~~underwriting criteria or to utilize marital status, living~~
7 ~~arrangements, occupation, gender, beneficiary~~
8 ~~designation, ZIP Codes or other territorial classification~~
9 ~~within this state, or any combination thereof for the~~
10 ~~purpose of establishing sexual orientation or determining~~
11 ~~whether to require a test for the presence of the human~~
12 ~~immunodeficiency virus or antibodies to that virus,~~
13 ~~where that testing is otherwise permitted by law. Nothing~~
14 ~~in this section shall be construed to alter, expand, or limit~~
15 ~~in any manner the existing law respecting the authority~~
16 ~~of insurers to conduct tests for the presence of human~~
17 ~~immunodeficiency virus or evidence thereof.~~

18 ~~(c) Any insurer that knowingly violates this section~~
19 ~~shall for each violation be assessed a civil penalty in an~~
20 ~~amount not less than one thousand dollars (\$1,000) and~~
21 ~~not more than five thousand dollars (\$5,000) plus court~~
22 ~~costs, as determined by the court.~~

23 ~~(d) This section shall not be construed to limit the~~
24 ~~authority of the commissioner to adopt regulations~~
25 ~~prohibiting discrimination because of sex, marital status,~~
26 ~~or sexual orientation or to enforce these regulations,~~
27 ~~whether adopted before or on or after January 1, 1991.~~

28 ~~(e) This section shall become operative on January 1,~~
29 ~~2002.~~

30 *SEC. 8. No reimbursement is required by this act*
31 *pursuant to Section 6 of Article XIII B of the California*
32 *Constitution because the only costs that may be incurred*
33 *by a local agency or school district will be incurred*
34 *because this act creates a new crime or infraction,*
35 *eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section*
37 *17556 of the Government Code, or changes the definition*
38 *of a crime within the meaning of Section 6 of Article*
39 *XIII B of the California Constitution.*

1 *Notwithstanding Section 17580 of the Government*
2 *Code, unless otherwise specified, the provisions of this act*
3 *shall become operative on the same date that the act*
4 *takes effect pursuant to the California Constitution.*

5 ~~amended to read:~~

6 ~~1685. The commissioner may issue to a person eligible~~
7 ~~therefor a certificate of convenience to act as any of the~~
8 ~~following:~~

9 ~~(a) Any type of a licensee under this chapter or~~
10 ~~Chapter 6 (commencing with Section 1760), 7~~
11 ~~(commencing with Section 1800), or Part 5 (commencing~~
12 ~~with Section 12140) of Division 2 to administer the~~
13 ~~business of a licensed person who has died or who has~~
14 ~~been declared incompetent by the judgment of a court of~~
15 ~~competent jurisdiction. That certificate of convenience~~
16 ~~may be denominated an estate certificate of~~
17 ~~convenience.~~

18 ~~(b) Any type of a licensee under this chapter or~~
19 ~~Chapter 6 (commencing with Section 1760), 7~~
20 ~~(commencing with Section 1800), or Part 5 (commencing~~
21 ~~with Section 12140) of Division 2 to conserve the business~~
22 ~~of a licensed natural person who enters the military~~
23 ~~service of the United States or to conserve the business of~~
24 ~~an organization under the conditions specified in Section~~
25 ~~1697. That certificate of convenience may be~~
26 ~~denominated a military service certificate.~~

27 ~~(c) An industrial debit collection certificate holder to~~
28 ~~transact industrial life and industrial disability insurance.~~
29 ~~That certificate of convenience may be denominated a~~
30 ~~certificate of convenience pending examination.~~

31 ~~(1) "Industrial life insurance" means life insurance~~
32 ~~with an aggregate face amount sold to any one insured~~
33 ~~and in force at any one time in an amount not exceeding~~
34 ~~ten thousand dollars (\$10,000); premiums are payable at~~
35 ~~least monthly; premiums are collected in person and not~~
36 ~~by mail or otherwise by the industrial debit collection~~
37 ~~certificate holder with a written receipt delivered to the~~
38 ~~insured, and the words "INDUSTRIAL LIFE POLICY"~~
39 ~~or "MONTHLY DEBIT ORDINARY" are printed on the~~
40 ~~policy as part of the descriptive matter.~~

1 ~~(2) “Industrial disability insurance” means disability~~
2 ~~insurance with premiums payable at least monthly at a~~
3 ~~rate not greater than fifteen dollars (\$15) per person, per~~
4 ~~month; premiums are collected in person and not by mail~~
5 ~~or otherwise by the industrial debit collection certificate~~
6 ~~holder with a written receipt delivered to the insured and~~
7 ~~with the words “INDUSTRIAL POLICY” printed on the~~
8 ~~policy as part of the descriptive matter.~~

9 ~~(3) An industrial debit collection certificate holder~~
10 ~~may collect premiums on insurance policies not solicited~~
11 ~~by him or her so long as the premiums are collected in~~
12 ~~person and not by mail or otherwise by the certificate~~
13 ~~holder at least once a month and the insured is issued a~~
14 ~~written receipt for the premium payment thereof.~~

15 ~~(4) An industrial debit collection certificate holder~~
16 ~~shall be subject to the provisions of this code regulating~~
17 ~~the conduct of life agents.~~